

***NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF FLORIDA AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4***

Section I. Introduction

This Memorandum of Agreement (hereinafter, MOA) establishes policies, responsibilities and procedures pursuant to 40 Code of Federal Regulations (C.F.R.) Part 123 and sets forth procedures for how the National Pollutant Discharge Elimination System (NPDES) program will be administered by the State of Florida, Department of Environmental Protection (hereinafter, FDEP or State) and reviewed by Region 4 of the United States Environmental Protection Agency (hereinafter, EPA or Region 4). All additional agreements between the FDEP and EPA are subject to review by the Regional Administrator of the U.S. Environmental Protection Agency, Region 4 (hereinafter, the Regional Administrator), and the Secretary of the FDEP (hereinafter, the Secretary). If the Regional Administrator determines that any provision of any agreement does not conform to the requirements of Section 402(b) of the Federal Clean Water Act (hereinafter, the CWA), 33 U.S.C. 1251 *et. seq.*, or to the requirements of 40 C.F.R. Parts 122-125, or other applicable federal regulations, the Regional Administrator shall notify the Secretary of any proposed revisions or modifications which must be in such agreements.

The Secretary and the Regional Administrator hereby agree to maintain a high level of cooperation and coordination between the FDEP and EPA staffs in a partnership to ensure successful and effective administration of the NPDES program. In this partnership, EPA will provide to the FDEP technical and other assistance on permit, compliance and enforcement matters when requested, as appropriate and as funding allows.

The FDEP will administer an NPDES program in accordance with the CWA Section 402, this MOA, applicable Florida legal authority, and the annual State Section 106 Program Plan (State 106 Workplan). The FDEP has the primary responsibility to establish the State NPDES program priorities that are consistent with national NPDES goals and objectives. This agreement does not establish an agent relationship between EPA and the State, and no waiver of sovereign immunity is implied or assumed by this agreement.

The strategies and priorities for issuance, compliance monitoring and enforcement of permits, as established in this MOA, may be set forth in more detail in the State 106 Workplan, a Performance Partnership Agreement (PPA), or a State/EPA Enforcement Agreement signed by the Secretary and the Regional Administrator. This MOA, the State 106 Workplan, the PPA, and any other State/EPA agreement(s) regarding the NPDES program shall not be in conflict.

Either the Secretary or the Regional Administrator may initiate an action to modify this MOA at any time. However, before this MOA may be modified, any revisions must be in writing and signed by the Secretary and the Regional Administrator. It is recognized that organizational changes may occur at federal or state levels as programs evolve. The parties

FLORIDA

SECTION D

MEMORANDUM OF AGREEMENT

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Section I. General

This Memorandum of Agreement (hereinafter, AGREEMENT) establishes policies, responsibilities and procedures pursuant to 40 C.F.R. Part 123 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) will be administered by the State of Florida Department of Environmental Protection (hereinafter, the DEPARTMENT) and reviewed by Region 4 of the United States Environmental Protection Agency (hereinafter, EPA). All additional agreements between the DEPARTMENT and EPA are subject to review by the REGIONAL ADMINISTRATOR of the U.S. Environmental Protection Agency, Region 4 (hereinafter, the REGIONAL ADMINISTRATOR), and the SECRETARY of the Florida Department of Environmental Protection (hereinafter, the SECRETARY). If the ADMINISTRATOR of EPA determines that any provision of any agreement does not conform to the requirements of Section 402(b) of the Federal Clean Water Act (hereinafter, the CWA), 33 U.S.C. 1251 et. seq., or to the requirements of 40 C.F.R. Parts 122-125, or other applicable Federal regulations, the ADMINISTRATOR shall notify the SECRETARY and the REGIONAL ADMINISTRATOR of any proposed revisions or modifications which must be in such agreements.

The SECRETARY and the REGIONAL ADMINISTRATOR hereby agree that pursuant to Section 403.0885, Florida Statutes (F.S.), this AGREEMENT does not address DEPARTMENT permits

or portions of DEPARTMENT permits which do not apply to discharges of pollutants to surface waters of the United States. Further, the SECRETARY and the REGIONAL ADMINISTRATOR hereby agree to maintain a high level of cooperation and coordination between DEPARTMENT and EPA staffs in a partnership to assure successful and effective administration of a NPDES program. In this partnership, EPA will provide to the DEPARTMENT, on a continuing basis, technical and other assistance on permit matters as requested.

The DEPARTMENT will administer a NPDES program in accordance with Section 402 of the CWA, this AGREEMENT, applicable DEPARTMENT legal authority, and the annual State Program Plan. The DEPARTMENT has the primary responsibility to establish the State NPDES program priorities which are consistent with national NPDES goals and objectives.

The strategies and priorities for issuance, compliance monitoring and enforcement of permits, as established in this MOA, may be set forth in more detail in the annual State 106 program plan and the State/EPA Enforcement Agreement signed by the DEPARTMENT and the REGIONAL ADMINISTRATOR of EPA, Region 4. This MOA, the State 106 program plan, and the State/EPA agreement(s) regarding the NPDES program shall be consistent. However, the basic requirements of this MOA shall override any other State/EPA agreement(s) as required by 40 C.F.R. § 123.34(c).

Either the DEPARTMENT OR the REGIONAL ADMINISTRATOR may initiate action to modify this AGREEMENT at any time. However, before this AGREEMENT may be modified, any proposed revisions must be put in writing, signed by the SECRETARY and the REGIONAL ADMINISTRATOR, and approved by the ADMINISTRATOR.

Section II. Scope of Authorization

The SECRETARY and the REGIONAL ADMINISTRATOR agree that Florida has requested that the U.S. Environmental Protection Agency (EPA) grant it authority to administer NPDES permitting, compliance, and enforcement: NPDES general permits, except for storm water discharges; and the

NPDES pretreatment program in Florida. Florida has requested authorization in phases as provided for by Section 402(f) and (n) of the Clean Water Act. This first phase of authorization does not include permitting of federal facilities, or the portions of the storm water permitting program. In the fourth year after receiving initial authorization, no later than May 1, 1999, the SECRETARY agrees that Florida will apply for authorization to administer all of the storm water and Federal facility permitting, compliance, and enforcement programs. The DEPARTMENT will begin administering and enforcing all of the stormwater and Federal facility permitting, compliance and enforcement programs no later than May 1, 2000.

The DEPARTMENT does not exercise jurisdiction over Federally recognized Indian lands in Florida and will not be seeking authorization for a NPDES program in those areas. Further, the DEPARTMENT will not be seeking authorization for a sewage sludge management program as part of a NPDES program.

Section III. Policies

The DEPARTMENT program equivalent to NPDES, under section 402 of the CWA, will be the Florida Wastewater Regulation Program (FWRP) adopted under Section 403.0885 of the Florida Statutes and implemented by Chapters 62-620 and 62-625 of the Florida Administrative Code.

A. DEPARTMENT Responsibilities

In accordance with the priorities and procedures established in this AGREEMENT and the annual State Program Plan, the DEPARTMENT will:

1. Create and maintain to the maximum extent possible the legal authority and the resources required to carry out all aspects of the FWRP program.
2. Process in a timely manner and propose to issue, reissue, modify, terminate, or deny FWRP permits to the following categories of applicants:
 - a. Industrial, commercial, mining and silvicultural dischargers as outlined in Section

IV of this AGREEMENT, except as excluded in Section II:

- b. Animal feeding operations and aquatic animal production facilities (as defined in 40 C.F.R. §§ 122.23-122.24), and Section IV of this AGREEMENT; or
 - c. Domestic wastewater treatment facilities that include publicly owned treatment works and privately owned treatment works as outlined in Section IV of this AGREEMENT.
- 3. Comprehensively evaluate and assess compliance with compliance schedules, effluent limitations and other conditions in these permits as outlined in Section V of this AGREEMENT.
 - 4. Maintain a vigorous program of taking timely and appropriate enforcement actions in accordance with Florida Statutes and the CWA.
 - 5. Maintain an effective program to carry out the pretreatment responsibilities outlined in Section VII of this AGREEMENT.
 - 6. Maintain an adequate public file at the appropriate district or central office which must be easily accessible to EPA for program evaluation for each permittee. Such files must include at a minimum, copies of:
 - Permit Application
 - Public Notice and either Fact Sheet or Statement of Basis
 - Draft Permit
 - Public Comments
 - Final Permit or Final Order of Denial
 - Discharge Monitoring Reports
 - All inspection reports
 - All enforcement actions

- Other pertinent information and correspondence.

7. Submit to the REGIONAL ADMINISTRATOR the information described in Section VIII of this AGREEMENT, the State Program Plan and applicable portions of 40 C.F.R. Part 123. The DEPARTMENT will cooperate with EPA in the administration of the FWRP in accordance with EPA program policies and guidance. Additionally, upon request by the REGIONAL ADMINISTRATOR, the DEPARTMENT shall submit specific information and allow access to files necessary for evaluating DEPARTMENT administration of the FWRP.

B. EPA Responsibilities

1. EPA will commit, to the maximum extent possible, funding to the DEPARTMENT to support this effort. It is recognized that a portion of FWRP related activities are §106 funded and should a reduction in funds occur, the FWRP effort may be reduced by a negotiated amount.
2. Where no effective effluent guidelines or standards exist for a discharge, EPA is responsible for transmitting to the DEPARTMENT technical information to assist in writing permit terms and conditions, for example, contractor reports, draft development documents, and available permits and effluent data from similar facilities. Such information will be provided within thirty (30) days of request by the DEPARTMENT.
3. As outlined in Section IX of this AGREEMENT, EPA will oversee the DEPARTMENT administration of FWRP on a continuing basis for consistency with the CWA, State law or rules, this AGREEMENT, the State Program Plan, and all applicable Federal regulations. In addition, EPA may consider as a part of its assessment, comments from permittees, the public, and Federal and local agencies concerning the DEPARTMENT administration of FWRP. Any such comments considered by EPA will be brought to the

attention of the DEPARTMENT by written correspondence, if the commenting party has not previously communicated with the DEPARTMENT. Any information obtained or used by the DEPARTMENT under the FWRP shall be available to EPA upon request without restriction due to claims of confidentiality. If the information has been submitted to the DEPARTMENT under a claim of confidentiality, the DEPARTMENT shall inform EPA of that claim. Information claimed confidential which is used to develop permit conditions will be treated in accordance with 40 C.F.R. Part 2, Subpart B; and 40 C.F.R. § 122.7.

4. EPA shall provide, on an annual basis, formal training courses in compliance inspections and permit writing, contingent on available EPA resources.

C. Jurisdiction over Permits

Upon the REGIONAL ADMINISTRATOR'S approval of the FWRP program, the DEPARTMENT will immediately assume jurisdiction over federal NPDES permits as set forth in Rule 62-620.105, F.A.C., and as follows:

1. The DEPARTMENT will assume authority for permitting, pretreatment program, compliance and enforcement activities of the NPDES program; except for certain storm water activities described in III.D. below, jurisdiction over Federal facilities, Federally recognized Indian Reservations, and sludge as regulated under § 405 of the CWA; as indicated in III.D.4. below.
2. For permits under active Federal enforcement at the time of program authorization, EPA will complete the enforcement action; however, the DEPARTMENT will assume permitting, pretreatment program, compliance, and future enforcement authority. As each EPA enforcement action is resolved, EPA will notify the DEPARTMENT and transfer any additional permit file materials at that time. EPA will make every effort to

resolve these matters in a timely manner. A specific list of these permits appears as Attachment A to this AGREEMENT.

3. For permits for which an evidentiary hearing has been requested at the time of program authorization, EPA will retain full jurisdiction until that matter has been resolved. Upon resolution of the administrative challenge or expiration of the permit, EPA will notify the DEPARTMENT and the permittee that full jurisdiction of the permit has been transferred to the DEPARTMENT. EPA will make every effort to resolve these issues in a timely manner and if requested by either EPA or the DEPARTMENT, meetings will be scheduled to discuss issues pertaining to retained NPDES permits. The DEPARTMENT shall retain its rights under Section 401 of the CWA to consider certification to subsequent EPA permitting actions on these retained NPDES permits. A specific list of these permits appears in Attachment B to this AGREEMENT.
4. In addition, for certain other facilities or discharges, as agreed to between the DEPARTMENT and EPA, EPA will retain full jurisdiction for these NPDES permits following authorization of the FWRP. Upon completion of the permit issuance, modification, or other such action, or assumption of that program component by the DEPARTMENT, EPA will notify the DEPARTMENT and the permittee that full jurisdiction of the permit has been transferred to the DEPARTMENT. For certain other facilities or discharges, such as those discharging into federal waters, EPA will retain full jurisdiction for these NPDES permits. A specific list of these permits appears in Attachment C to this AGREEMENT.
5. If a DEPARTMENT permit is vetoed by EPA, EPA will assume permitting, compliance, and enforcement authority for that facility.

D. Storm Water Permits

1. Municipal Separate Storm Sewer Systems (MS4s). For a period of not less than four years from the date of initial FWRP approval, the EPA will continue to administer the MS4 NPDES program retaining permitting and enforcement responsibility for municipal storm water dischargers in the following counties, as well as any MS4s that may be added by EPA pursuant to 40 C.F.R. §§ 122.6(b)(4)(iii) or 122.26(b)(5)(iii)).

Broward	Lee	Pasco
Dade	Leon	Pinellas
Duval	Manatee	Polk
Escambia	Orange	Sarasota
Hillsborough	Palm Beach	Seminole

2. Storm Water General Permits. For a period of not less than four years from the date of initial FWRP approval, the EPA will continue to administer the NPDES program for storm water general permits retaining permitting and enforcement responsibility.
3. Individual Permits for Storm Water Only Discharges. For a period of not less than four years from the date of initial FWRP approval, the EPA will continue to administer the NPDES program for individual storm water only dischargers and will retain permitting and enforcement responsibility.
4. Individual Permits that Include Storm Water Provisions. On the date of the initial FWRP authorization, the DEPARTMENT will assume permitting, compliance, and enforcement authority for storm water discharges associated with facilities permitted by the DEPARTMENT to discharge non-storm water (e.g., domestic, process or non-process wastewater) to navigable waters, unless the discharge is covered by a storm water general permit administered by EPA.

5. Storm Water Phased Program Schedule.

a. Municipal Separate Storm Sewer Systems:

- (1) The DEPARTMENT will submit a draft of any necessary programmatic elements and regulatory revisions, including staffing and resource needs, necessary to assume responsibility for the implementation and enforcement of the MS4 NPDES program no later than May 1, 1998.
- (2) The DEPARTMENT will submit all final programmatic and regulatory revisions necessary to assume responsibility for implementation and enforcement of the MS4 NPDES program no later than May 1, 1999.
- (3) The DEPARTMENT will begin administering and enforcing the MS4 NPDES program no later than May 1, 2000.

b. Individual Permits for Storm Water-Only Discharges and General Permits for Storm Water:

- (1) The DEPARTMENT will submit a draft of any necessary programmatic elements and regulatory revisions, including staffing and resource needs, necessary to assume responsibility for implementation and enforcement of individual storm water-only dischargers and storm water general permits no later than May 1, 1998.
- (2) The DEPARTMENT will submit all final programmatic and regulatory revisions necessary to assume responsibility for implementation and enforcement of individual storm water-only dischargers and storm water general permits no later than May 1, 1999.
- (3) The DEPARTMENT will begin administering and enforcing the NPDES permit program for individual storm water-only dischargers and storm

water general permits no later than May 1, 2000.

- c. The DEPARTMENT shall submit to EPA a proposed response for a discharger who disagrees with the DEPARTMENT decision whether a discharge, or a component of a discharge, should be administered under Subsection IIID 3. or IIID 4. If EPA does not respond to the DEPARTMENT submittal within thirty (30) days of the date the proposed response was mailed, the DEPARTMENT shall prepare and mail a final response to the discharger, with a copy to EPA, as described in the proposed response.

Section IV . Permit Review and Issuance

The DEPARTMENT is responsible for drafting, providing public notice, issuing, revising, reissuing, and terminating permits in accordance with Section III, Section VIII, and Subsection IV D, Paragraphs 1-3 and 40 C.F.R. Parts 122-123 and any other applicable regulations. If an existing permit has been administratively continued beyond its expiration date, it shall not be revised.

A. Receipt of New Permit Applications by the DEPARTMENT.

Upon receipt of a completed permit application, the DEPARTMENT will enter into the EPA National Permit Compliance System (PCS), all required information. The DEPARTMENT will transfer this information electronically from the DEPARTMENT data management system.

B. EPA Review of Draft and Proposed Permits, Permit Revisions, and Permit Revocations and Reissuances.

- 1. EPA will review draft permits rather than proposed permits. A proposed permit need not be prepared by the DEPARTMENT and transmitted to EPA for review unless the DEPARTMENT proposes to issue a permit which differs from the draft permit reviewed by EPA, the EPA has objected to the draft permit, or there is significant public comment.

2. Unless otherwise waived, EPA will review all draft FWRP permits, permit revisions and revocations and reissuances. On the date the draft permit is sent to the applicant, the DEPARTMENT will send the EPA, Region 4 Water Permits and Enforcement Branch one copy of the public notice, the draft permit, the application, and the fact sheet or statement of basis associated with the draft permit. When applicable, the submittal must be accompanied by a new source/new discharger determination.
3. Within thirty-five (35) days of the date the draft permit is sent to EPA, Region 4, the Water Permits and Enforcement Branch will send to the DEPARTMENT written agreement, comments, or objections to each draft permit, including a statement of the reasons for the comments or objections and the sections of the CWA or regulations which support them. The time for EPA review shall be extended to 90 days upon request of EPA. A copy of all comments or objections will also be sent by EPA to the permit applicant. In the event EPA files a "general objection" to a draft permit, EPA shall have 90 days from the date the draft permit is sent to supply the specific grounds for objection, and the terms and conditions which should be included in the permit. If the initial permit information supplied by the DEPARTMENT under paragraph B.2. above is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, EPA may file an "interim objection" under 40 C.F.R. § 123.44(d)(2) and request the DEPARTMENT to transmit the complete record (or portion thereof) of the DEPARTMENT permit proceedings. The full period for EPA review specified in this AGREEMENT shall recommence when the requested information is sent to EPA. All EPA comments and objections must be considered by the DEPARTMENT along with any other public comments received in the preparation of the proposed permit. If EPA does not respond within thirty-five (35) days of the date the draft permit is sent, unless an

extension is requested, the DEPARTMENT may take this absence of a response as concurrence with the draft permit and that the DEPARTMENT need not prepare a proposed permit and transmit it to EPA for review.

4. Following expiration of the period for public comment, a proposed permit will be drafted. If (a) the proposed permit is the same as the draft permit defined in the public notice, and (b) EPA has not objected to such draft permit, and (c) valid and significant public comments have not been made, the DEPARTMENT may assume EPA has waived their review of the proposed project and issue the permit without further review by EPA. A copy of the final issued permit shall be sent to EPA. In all other cases, the DEPARTMENT will send one copy of the proposed permit, recommendations of any other affected State, and copies of written comments and hearing records, including the response to comments prepared under 40 C.F.R. § 124.17 to the EPA, Region 4, Water Permits and Enforcement Branch. Whenever the DEPARTMENT prepares a written explanation to an affected State explaining the reasons for rejecting any of its written recommendations, the DEPARTMENT shall transmit a copy to the REGIONAL ADMINISTRATOR. The EPA/Regional Water Management Division Director will, within thirty (30) days of the date the proposed permit is sent to EPA, notify the DEPARTMENT and the permit applicant of any formal objections authorized under 402(d) of the CWA. This notification shall set forth in writing the general nature of the objection.
5. In the event EPA files a general objection under either paragraphs B.3. or B.4. above, the REGIONAL ADMINISTRATOR shall notify the DEPARTMENT in writing, within ninety (90) days after the date the draft or proposed permit is sent, as to the reasons for the objection and the actions that must be taken to eliminate the objection. EPA

objections must be based upon one or more of the criteria identified in 40 C.F.R. § 123.44(c). DEPARTMENT requests for a hearing on the objection and the procedure for resolving the objection shall be governed by 40 C.F.R. § 123.44. If EPA objections are not satisfied within ninety (90) days of the notice of objection (or thirty (30) days following a public hearing on the objection), exclusive authority to issue the permit vests in EPA.

6. If EPA objects to the proposed permit, in accordance with 40 C.F.R. § 123.44, the DEPARTMENT will deny the proposed permit or will issue a permit in accordance with the EPA objections and mail a copy of the final permit to EPA.
7. EPA may request to review any applicant's notice of intent to be covered under a general permit, subject to DEPARTMENT authority under Section 403.0885, F.S. The EPA/Regional Water Management Division Director will, within ten (10) working days after receipt of the notice of intent, notify the DEPARTMENT of any formal objections to the applicant's suitability for coverage under the general permit.

C. Waiver of Permit Review by EPA

1. Except as hereafter expressly provided, at this time EPA waives the right to comment on or object to the sufficiency of permit applications, draft permits, proposed final permits, and finally adopted permits for any existing discharges or proposed discharges with the exception of the following:
 - a. discharges which may affect the waters of another state or Indian Lands;
 - b. discharges proposed to be regulated by general permits (see 40 C.F.R. § 122.28);
 - c. discharges from publicly owned treatment works with a permitted daily average discharge of at least 1.0 million gallons per day;

- d. discharges from any major discharger or a discharger within any of the industrial categories listed in Appendix A to 40 C.F.R. Part 122; and
- e. discharges from sources other than a. through d. with an average discharge exceeding 0.5 million gallons per day;
- f. discharges from POTW's required to have a pretreatment program (40 C.F.R. Part 403)

The foregoing does not include waiver of receipt of complete copies of applications, public notices of proposed permit issuances or denials, notices of public hearings, copies of all final permits issued, or any notices required under Section VIII of this AGREEMENT.

- 2. EPA waives the right to review the following:
 - a. a revision to any permit for which the right to review the original permit was waived by EPA (unless the revision would put the permit in one of the categories in Section IV.C.1.);
 - b. a revision to any permit which qualifies as a minor revision under 40 C.F.R. § 122.63.
- 3. EPA reserves the right to terminate the waivers in paragraphs 1 and 2 above (in whole or in part), at any time prior to the permit becoming final. Any such termination, and the reasons therefore, shall be in writing to the DEPARTMENT.
- 4. The foregoing waiver shall not be construed to authorize the issuance of permits which do not comply with applicable provisions of Federal or State laws, rules, regulations, or effluent guidelines, nor to relinquish the right of EPA to petition the DEPARTMENT for review of any action or inaction because of violation of Federal or State laws, rules, regulations, or effluent guidelines.

D. Public Participation

1. Draft permits, public notices, applications and fact sheets or statements of basis will be made available to any party upon request and upon payment of applicable state duplicating fees.
2. Unless otherwise waived by the specific organization, the DEPARTMENT will provide to the following organizations, copies of all public notices when required by 40 C.F.R. § 124.10 and fact sheets when required by 40 C.F.R. § 124.8:
 - U.S. Army Corps of Engineers
 - U.S. Fish and Wildlife Service (A copy of the draft permit will also be provided.)
 - National Marine Fisheries Service (A copy of the draft permit will also be provided.)
 - Other appropriate State and Federal Agencies
 - Adjacent States and Indian Tribes (only for permits which affect them)
 - The State of Florida Department of State, Division of Historical Resources
3. All draft general permits, major FWRP permits, and pretreatment program approvals shall be publicly noticed in a daily or weekly newspaper within the area affected by the activity, in accordance with 40 C.F.R. §§ 124.10(c)(2)(i).
4. For all permit applications, public notice will be given in accordance with Rule 62-620.550, F.A.C.

E. Coordination on Endangered Species

1. When developing draft permits, the DEPARTMENT shall review applicable information provided by the SERVICE¹, such as lists of all Federally listed species and critical habitat potentially impacted by FWRP permit actions. The DEPARTMENT shall

¹50 C.F.R. § 402.02 "Service" means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

evaluate the impact of the discharge on threatened and endangered species and shall note the results in the fact sheet or statement of basis for the draft permit.

2. The DEPARTMENT shall ensure that the SERVICE receives copies of all draft FWRP permits and applicable public notices as required by 40 C.F.R. §§ 124.10(c)(iv) and (e). The draft permit shall be sent to the SERVICE when the draft is mailed to the applicant.
3. If, prior to the close of the public comment period, the SERVICE contacts the DEPARTMENT with concerns that the draft permit action is likely to have an adverse impact on a Federally listed species or critical habitat, the DEPARTMENT will coordinate with the SERVICE to attempt to resolve the identified concerns. The DEPARTMENT would expect that the SERVICE would provide appropriate information in support of their identified concerns.
4. If contacted by the SERVICE prior to the close of the public comment period and informed that the SERVICE and the DEPARTMENT were unable to resolve identified issues, EPA will coordinate with the SERVICE and the DEPARTMENT to ensure that the draft permit will comply with DEPARTMENT water quality standards and discuss appropriate measures protective of Federally listed species and critical habitat (e.g., narrative criteria prohibiting toxic discharges).
5. EPA may object or require changes to a DEPARTMENT draft permit under Section 402(d)(4) of the CWA, or take other appropriate actions to address the concern where EPA finds (based on analysis conducted by the EPA or SERVICE) that issuance of a DEPARTMENT permit, as drafted, will have an adverse affect on Federally listed species or critical habitat. EPA will object or require changes to a DEPARTMENT draft permit where EPA finds (based on analysis conducted by the EPA or SERVICE) that the issuance of a DEPARTMENT permit, as drafted, is likely to jeopardize the continued

existence of any listed species or result in the destruction or adverse modification of critical habitat.

6. EPA may review or waive review of draft DEPARTMENT permits (40 C.F.R. § 123.24(d)). If EPA finds that the issuance of a permit, as drafted, has a reasonable potential to jeopardize or adversely modify critical habitat, and review of a draft permit has been waived, EPA will withdraw this waiver during the public comment period. If EPA finds that the issuance of a permit, as drafted, may adversely affect listed species or adversely modify critical habitat, and review of a draft permit has been waived, EPA may withdraw this waiver during the public comment period (40 C.F.R. § 123.24(e)(1)).
7. If EPA objects to a draft permit under paragraph 5. above, EPA will follow the permit objection procedures outlined in 40 C.F.R. § 123.44 and coordinate with the SERVICE in seeking to have the DEPARTMENT revise its draft permit to comply with water quality standards and avoid adversely affecting Federally listed species or destruction or adverse modification of critical habitat.
8. In the case of DEPARTMENT permits that have already been issued, if the SERVICE identifies a permit action which is likely to have an adverse affect on Federally listed species or critical habitat and the SERVICE contacts the DEPARTMENT to seek to remedy the situation, then EPA will provide support and assistance to the SERVICE in working with the DEPARTMENT. Although EPA may object to and assume issuing authority for NPDES permits, EPA has no authority to require changes to an already issued DEPARTMENT FWRP permit. The SERVICE could request that the DEPARTMENT use its authority to reopen an issued permit if it is likely to adversely affect Federally listed species or modify or destroy their critical habitat.

F. Issuance of Permits or Notice of Intent to Deny

1. If the final determination is to issue the permit, the final permit will be forwarded to the permit applicant, along with a transmittal letter notifying the applicant that the permit is being issued. Copies of issued permits will be forwarded to EPA in accordance with the schedule contained in Section VIII of this AGREEMENT.
2. If the final determination is to deny the permit, notice of intent to deny shall be given to EPA, Region 4, Water Permits and Enforcement Branch and to the applicant in accordance with applicable FWRP Rules, and NPDES regulations.

G. Suspension, or Revocation of Permits

When the DEPARTMENT makes a determination to suspend or revoke a permit, in whole or in part for cause, EPA will be notified.

H. Major Discharger List

There shall be included as a part of the annual State Program Plan a "major dischargers" list, for industrial and municipal facilities. The industrial major dischargers list shall include those facilities mutually defined by the DEPARTMENT and EPA as major dischargers based on a point rating worksheet or applicable definitions plus any additional dischargers that, in the opinion of the DEPARTMENT or EPA, have a high potential for violation of water quality standards. The municipal major dischargers list shall include those facilities mutually defined by the DEPARTMENT and EPA as major discharges based on a design domestic treatment plant flow of at least 1.0 MGD or a high potential for violation of water quality standards.

I. Administrative or Court Action.

If the terms of any permit, including any permit for which review has been waived by EPA, are affected in any manner by administrative or court action, the Department shall immediately transmit a copy of the permit, with changes identified to the EPA and shall

allow thirty (30) days for EPA to make written objections to the changed permit pursuant to Section 402(d) of the CWA.

J. Variances.

The DEPARTMENT will conduct an initial review of all requests for fundamentally different factors variances, for variances under Section 301(c), (g), and (k) and Section 316(a) of the CWA, and for modifications to federal effluent limitations established under Section 302 of the CWA.

1. The DEPARTMENT may deny or approve a request for a variance under Section 301(k) or 316(a) of the CWA after EPA has concurred with the proposed decision.
2. The DEPARTMENT may deny a request for a variance under Section 301(c) or (g), Section 302 of the CWA, or for fundamentally different factors. Such determination shall be forwarded to the requester and EPA. If the DEPARTMENT determines that factors exist that may warrant a variance, the request and the DEPARTMENT recommendation for approval shall be sent to EPA. If EPA denies the variance request, the DEPARTMENT shall notify the applicant. If EPA approves the variance request, the DEPARTMENT will prepare a draft permit factoring in the variance.
3. Review of any variance request shall not delay the DEPARTMENT processing of an application for a permit.

Section V. Compliance Monitoring

The DEPARTMENT agrees to maintain a vigorous enforcement program, including a compliance assessment of dischargers and to take timely and appropriate enforcement actions where such action is warranted. Discharges endangering public health shall receive immediate and paramount attention. The DEPARTMENT will operate a timely and effective compliance monitoring system via the Wastewater Facilities Regulation (WAFR) system and will upload the required data to the Permit Compliance System

(PCS) at least monthly. WAFR will be used to track compliance of permittees with permit conditions. For purposes of this AGREEMENT, the term "compliance monitoring" shall refer to all efforts to assure full compliance with FWRP permit conditions. Compliance monitoring shall normally focus first on major dischargers in accordance with the priorities and time frames for compliance tracking as established in this AGREEMENT and as further delineated in the annual State Program Plan. All compliance monitoring activities shall be undertaken in such a manner that, if the situation requires, will lead to timely appropriate and effective enforcement actions as outlined in Section VI. As indicated in Subsection IIIA 6. of this AGREEMENT, the DEPARTMENT shall maintain complete records of all written material relating to the compliance status of FWRP permittees, including Compliance Schedule Reports, Discharge Monitoring Reports, Compliance Inspection Reports, and any other reports that permittees may be required to submit under the terms and conditions of a FWRP permit, approved pretreatment program (when applicable), or court order.

A. Schedule Dates

The DEPARTMENT will track the submittal of all reports on date-related permit conditions or other schedules in effect pursuant to the permit (i.e., Administrative Orders, Enforcement Compliance Schedule Letters, court orders). In order to determine the permittee's compliance status, the DEPARTMENT will conduct a timely and substantive review of all date-related permit conditions and reports and consider possible enforcement actions for failure to submit required reports.

B. Review of Self-Monitoring Reports

1. The DEPARTMENT will operate a tracking system capable of determining if:
 - a. the required self-monitoring reports are submitted on time;
 - b. the submitted reports are complete;
 - c. the data are accurately entered into WAFR and uploaded into PCS; and

- d. the permit conditions are met.
2. The DEPARTMENT will conduct a timely and substantive review of all self-monitoring reports received, and will evaluate the permittee's compliance status. This evaluation will be uniform and consistent.
 3. The DEPARTMENT will ensure that monitoring data are entered into the WAFR data management system with the necessary quality assurance to achieve a 95 percent entry accuracy rate and uploaded to PCS.
 4. EPA may object in writing to deficiencies in reporting forms used by permittees or the DEPARTMENT. The DEPARTMENT will ensure that deficiencies identified by the REGIONAL ADMINISTRATOR are adequately addressed.
 5. The DEPARTMENT shall use EPA approved Discharge Monitoring Reports for all facilities.
 6. The DEPARTMENT will submit for all major facilities an automated Quarterly Noncompliance Report (QNCR) with annotations on a quarterly basis for all Category I and II violations. The Department agrees to utilize PCS to produce an automated QNCR, with hand-written annotations if necessary. EPA agrees to provide assistance in generating these automated QNCRs. The QNCR will be due at EPA on the 28th day of the second month following the close of the quarter being reported on. This shall include, as an attachment, a Pretreatment QNCR based on Agency guidance.
 7. EPA will review a random sample of Discharge Monitoring Reports and PCS entries during periodic audits of the DEPARTMENT FWRP program. EPA will verify the accuracy of the QNCRs and PCS during periodic audits.
 8. The DEPARTMENT shall initiate appropriate enforcement actions whenever required performance is not achieved or when reports are not received. In the case of violation

by a major discharger the DEPARTMENT shall initiate appropriate enforcement action within 30 days of the date such report was or should have been received by the DEPARTMENT. Enforcement actions will take into account frequency, severity, and analytical error in determining where limitations have been exceeded.

C. Facility Inspections.

1. Types

The different types of compliance inspections are described in the Foreword of EPA NPDES Compliance Inspection Manual (May 1988).

2. General Procedures

The DEPARTMENT and EPA will develop as part of the annual State Program Plan a list of FWRP regulated permittees to be the subject of compliance audits and inspections. The DEPARTMENT shall conduct compliance inspections of all the major permittees on at least an annual basis, unless otherwise negotiated by EPA, Region 4. EPA will be given adequate notice and opportunity to participate with the DEPARTMENT in its inspection activities. EPA or the DEPARTMENT may determine that additional inspections are necessary to assess compliance with issued permits. The DEPARTMENT may make additional inspections if necessary for managing the ecosystem of a particular area. If EPA makes a determination that additional inspections are necessary or appropriate, it shall notify the DEPARTMENT of such determination and may perform the inspection alone or jointly with the DEPARTMENT or may request the DEPARTMENT to conduct those inspections. EPA will keep the DEPARTMENT fully informed of their plans and results. EPA shall provide to the DEPARTMENT at least thirty (30) days notice before a joint or independent inspection is conducted. EPA will participate in up to 20 percent of the State scheduled FWRP regulated facility inspections

and will conduct some independent inspections to evaluate the effectiveness of the DEPARTMENT program activities. EPA may choose to reduce its overview activities in order to give emphasis to special needs.

3. Reporting Schedule

The DEPARTMENT will prepare a monthly inspection report summarizing the status of all complete and incomplete inspections for the previous month. The report will be forwarded to EPA within 45 days following the end of the reporting month. All inspections and laboratory audits conducted by the DEPARTMENT at major facilities will be electronically uploaded to PCS within 45 days of completion of the inspection or receipt of the laboratory results. Within 60 days of completion of the inspection, laboratory audit, or receipt of laboratory results, the DEPARTMENT will forward to EPA a copy of the inspection reports for major facilities. Where an audit or inspection is conducted solely by EPA, a copy will be forwarded to the DEPARTMENT within sixty (60) days after the inspection. Each report will be thoroughly reviewed by the DEPARTMENT to determine what, if any, enforcement action (as outlined in Section VI of the AGREEMENT) shall be initiated. Where the results of the inspection(s) indicate that the discharger is in violation, the DEPARTMENT shall initiate enforcement action within 30 days of the date of the inspection(s) or make a decision in writing to the file to exercise enforcement discretion not to take any action. Priorities for the review of these inspection reports and for initiating enforcement action will be specified in procedures developed by the DEPARTMENT.

4. The DEPARTMENT will conduct Compliance Biomonitoring Inspections for at least 10 percent of the permitted major facilities with Whole Effluent Toxicity limits.

D. Miscellaneous Compliance Activities

1. Independent Inspections Capability

The DEPARTMENT shall have inspections and surveillance procedures to identify compliance or noncompliance independent of permittee supplied information.

2. Information Requests

Whenever either EPA or the DEPARTMENT requests information concerning a specific discharger for a specific reason and the requested information is not available from the files, that information will be researched and, if possible, provided to the requesting agency within a reasonable time.

3. Laboratory Quality Assurance

- a. The EPA will be responsible for coordinating the DMR-QA program to evaluate laboratories serving the wastewater treatment facilities in Florida.
- b. EPA will take the lead in enforcing DMR-QA on non-responders and will be responsible for following up on DMR-QA study results.
- c. The DEPARTMENT will plan, initiate, and maintain a program to ensure that laboratories for FWRP permitted facilities follow approved quality assurance protocols.

4. Emergency Pollution Incidents

Upon receipt of any information of any situation posing an actual or threatened pollution incident that may result in endangerment to human health or the environment, the party in receipt of such information shall immediately notify by telephone the other party to this AGREEMENT of the incident (that is, the DEPARTMENT notifies EPA, and EPA notifies the DEPARTMENT). The DEPARTMENT may be notified at (904) 488-2974 (daytime) and (904) 488-1320 (nighttime, weekend, and holidays). These numbers are staffed by the DEPARTMENT Division of Law Enforcement, Bureau of Emergency

Response. The EPA may be notified by telephone at (404) 347-4062 (Emergency Response Section/Waste Management Division).

5. Integration of Pretreatment Compliance Monitoring Responsibilities into the FWRP Program

- a. The DEPARTMENT will conduct monitoring of approved local pretreatment programs consistent with the Pretreatment Compliance Monitoring and Enforcement Guidance (July, 1986). The DEPARTMENT will develop procedures and time frames for reviewing monitoring reports, including reports submitted by POTWs and semi annual reports submitted by categorical and significant non-categorical Industrial Users (IUs) in areas without local programs; establishing and maintaining a complete inventory of POTWs with pretreatment programs; and conducting annual audits or inspections or equivalent review of program elements of POTWs with approved programs, including a sample of IUs in the POTW, consistent with work plan commitments.
- b. The DEPARTMENT should also have a plan for completing an inventory of all categorical and significant non-categorical IUs.

E. Compliance Manual

The DEPARTMENT agrees to implement FWRP compliance procedures described in the Program Description of this application. These procedures will also be contained in a Compliance Manual which will be developed by the DEPARTMENT and EPA. The DEPARTMENT agrees to submit any changes to the Manual to the REGIONAL ADMINISTRATOR for approval. EPA will return the proposed changes to the DEPARTMENT with either comments or approval within 45 days of submittal.

Section VI. Enforcement

A. Timely Enforcement Responsibility

1. The DEPARTMENT is responsible for taking timely and appropriate enforcement action (as defined in paragraph 2 of this section) against persons [as defined in Section 403.031(5), F.S.] in violation of compliance schedules, effluent limitations, pretreatment standards and requirements, and all other permit conditions. This responsibility encompasses violations whether detected by the DEPARTMENT or Federal surveys.
2. The DEPARTMENT will use pre-enforcement procedures that are consistent with the principles in the EPA Enforcement Management System (EMS) including the Technical Review Criteria (TRC) and the Enforcement Response Guide (ERG). The procedures will include application of the TRC for screening DMRs to determine significance of violations; procedures and time frames for applying appropriate initial response options to identified violations; and procedures for maintaining a chronological summary of all violations. The DEPARTMENT will screen all DMRs from permittees to determine the level and frequency of all violations and will evaluate instances of noncompliance by all major and minor permittees. Within 30 days of the identification of a violation, the DEPARTMENT will determine the appropriate initial response, consistent with the EMS, and document any action taken/no. taken, including the technical reason therefore. The date of identification of the violation is the point at which the DEPARTMENT enforcement staff learn of the violation.
3. Timely enforcement action begins with a written notice to a FWRP regulated discharger within thirty (30) days of the DEPARTMENT becoming aware that any of the following violations have occurred (actions against minor dischargers generally should be given lower priority but should be taken as quickly as possible):
 - a. failure to submit a date related report;

- b. failure to submit a self-monitoring report;
 - c. failure to meet an effluent limitation or other permit conditions (if the failure is detected as the result of a CEI or a CSI, notice must be issued within thirty (30) days of the date of the inspection report or receipt of the analytical results, where applicable); or
 - d. any other violation of DEPARTMENT rules or statutes detected during an inspection.
4. If a notice is not applicable or effective, timely enforcement action also includes follow-up with other enforcement mechanisms to ensure permit and program compliance.
5. For serious violations which present an imminent danger to the health or welfare of the people or to the environment of the State, the DEPARTMENT shall issue a complaint for injunctive relief under Section 403.131, F.S., or shall take other appropriate enforcement action which may include, but not be limited to, an immediate final order pursuant to Section 120.59(3), F.S., to effect the immediate correction of the violation. The SECRETARY will order, without prior hearing, the immediate discontinuance of any such activity pursuant to said statutory authority. Such orders shall be issued as soon as possible when the DEPARTMENT makes a determination that the condition or activity is of a nature which, if not abated, will pose a substantial risk of harm to the health, safety, and welfare of the public, but in no case to exceed ten (10) days from initial notification to the Florida Department of Environmental Protection of the condition or activity.
6. The DEPARTMENT shall keep records that demonstrate that its enforcement procedures result in appropriate initial and follow-up enforcement actions that are applied in a uniform, consistent, and timely manner; formal enforcement actions that clearly define

what the permittee is expected to do by a reasonable date certain; the assessment of a civil penalty, when appropriate, based on consideration of established factors² (or equivalent sanctions) as part of all civil judicial referrals and an amount appropriate to the violation; and compilation of complete and accurate permanent records that can be used in future formal enforcement actions³ as defined in paragraph 8 of this section.

7. The DEPARTMENT shall keep records on penalty calculations for enforcement actions where a civil penalty is assessed or penalty payments are agreed upon in a formal enforcement action.
8. In the case of major permittees, by the time a major permittee appears on the QNCR and is determined to be in noncompliance, the DEPARTMENT is expected to have already initiated enforcement actions to achieve compliance. Prior to a permittee appearing on the subsequent QNCR for the same instance of noncompliance, the permittee should either be in compliance or the DEPARTMENT should have taken formal enforcement action (generally within 60 days of the first QNCR) to achieve final compliance. For the State of Florida, these formal actions are defined as Notice of Violations, Final Orders of Compliance, or Consent Orders or initiation of civil action under Section 403.131 or 403.141, F.S.
9. The DEPARTMENT will submit to EPA (NPDES Enforcement Section) on January 10, April 10, July 10, and October 10 a statistical summary of the cases filed in Circuit

²The determination of a penalty amount (or equivalent sanction) should be based on factors such as the seriousness of the violation(s), any history of noncompliance, any good faith effort to comply with applicable requirements, the amount of economic benefit resulting from the violation, the economic impact of the penalty on the violator, and such other factors as justice may require; the seriousness of a set of violations includes consideration of the harm or risk of harm posed to human health or the environment by the violations, the amount by which effluent limits were exceeded, the violator's efforts to correct the problem, and the duration of the violations.

³A **formal enforcement action** is defined as one that requires actions to achieve compliance, specifies a timetable, contours consequences for noncompliance that are independently enforceable without having to prove the original violation, and subjects the person to adverse legal consequences for noncompliance (see Policy Framework for details).

Court involving FWRP violations in the preceding quarter. In addition, on April 10 and October 10 an annotated listing of the actions in the above summary will be submitted. Forms for these reports will be furnished to the DEPARTMENT.

10. EPA will verify the timeliness and appropriateness of the DEPARTMENT enforcement actions and will use the criteria of more than 95 percent of SNC facilities timely and appropriate and less than 1 percent of all major facilities should appear on the Exceptions List for the region. Shortfalls will lead to joint actions to identify opportunities to improve the management of cases.
11. The DEPARTMENT shall maintain procedures for receiving and ensuring proper consideration of information about alleged violations which is submitted by the public.
12. The DEPARTMENT agrees to implement FWRP enforcement procedures described in the Program Description of this application. These procedures will also be contained in an Enforcement Manual which will be developed by the DEPARTMENT and EPA. The DEPARTMENT agrees to submit any changes to the Manual to the REGIONAL ADMINISTRATOR for approval. EPA will return the proposed changes to the DEPARTMENT with either comments or approval within 45 days of submittal.

B. EPA Actions on Improper Enforcement Claims

In instances where EPA determines that the DEPARTMENT has not initiated timely and appropriate enforcement actions for permit violations, EPA may proceed with any or all enforcement options available under the CWA.

1. Failure of the DEPARTMENT to take appropriate enforcement actions is defined as any of the following.
 - a. Failure to seek or impose, where appropriate, penalties consistent with 40 C.F.R.

§ 123.27.

- b. Failure to resolve missing or late self-monitoring or other reports.
2. Failure by the DEPARTMENT, when a discharger fails to submit either a schedule-date-related report or a discharge monitoring report, to determine the reason for noncompliance and to initiate appropriate enforcement action to correct the noncompliance may be the basis for EPA determination that the DEPARTMENT has failed to take timely enforcement action.
3. Except for violations which affect the national interest, or violations on which the DEPARTMENT has not initiated enforcement action, the REGIONAL ADMINISTRATOR will generally not proceed with Federal civil enforcement until the DEPARTMENT has been given at least thirty (30) days to seek enforcement. Such notification shall not be required when EPA is exercising power under Section 504 of the CWA. The REGIONAL ADMINISTRATOR shall base his request for enforcement on a determination of one or more of the following reasons:
- a. any person is in violation of Sections 301, 302, 306, 307, 308, 318, 402, or 405 of the Act, or
 - b. any person is in violation of any permit condition or limitation implementing those sections in a permit issued by the DEPARTMENT,
 - c. the DEPARTMENT has not taken timely action or appropriate enforcement action, or
 - d. widespread permit violations exist.

The REGIONAL ADMINISTRATOR shall notify the DEPARTMENT of the findings and give the DEPARTMENT thirty (30) days in which to seek compliance, issue a formal enforcement action or file civil or criminal action.

4. The following table specifies when EPA will send a Section 309 Notice to the DEPARTMENT:

For unresolved violations in: EPA will send a §309 Notice by:

July-December	March 31
October-March	June 30
January-June	September 30
April-September	December 31

Following the 30-day §309 Notice period, EPA will proceed with appropriate direct action absent clear indication of acceptable DEPARTMENT action.

5. As final steps prior to proceeding with Federal civil enforcement action (and for the purpose of providing notice only), EPA shall inform the DEPARTMENT that Federal enforcement action is to be initiated forthwith. This notification may be in the form of a telephone communication from the REGIONAL ADMINISTRATOR, with written documentation by EPA to the DEPARTMENT; and, except in the exercise by EPA of its emergency power under Section 504 of the CWA, such notification shall be provided in all cases of Federal civil enforcement action regardless of the existence or extent of previous communications between EPA and the DEPARTMENT on the matter. In the usual case, it is expected that preliminary staff discussions will take place between EPA and the DEPARTMENT before institution of Federal civil enforcement action.

C. Appropriate Involvement of DEPARTMENT Office of General Counsel (OGC)

1. The DEPARTMENT will establish procedures for routine coordination on enforcement cases between the District Offices and the OGC, including notification of proposed enforcement actions and general time frames for actions from case referral to filing;
2. The DEPARTMENT is responsible for ensuring that the OGC is consulted on the annual judicial enforcement commitments. As a part of the procedures, the DEPARTMENT will consider using PCS-type enforcement coordination reports to ensure that all actions

are tracked and coordinated.

3. The DEPARTMENT is also responsible for establishing workable internal procedures for notifying and consulting with the OGC on individual cases arising throughout the year. The DEPARTMENT will provide a copy of these procedures to EPA. The DEPARTMENT will demonstrate that its internal coordination procedures with the OGC (or other appropriate legal staff) result in:

- a. timely review of initial referral packages;
- b. satisfactory settlement of cases, as appropriate;
- c. timely filing and prosecution of well-prepared referral cases; and
- d. prompt action where dischargers violate consent orders.

As a general goal, the DEPARTMENT cases should proceed from referral to filing in 60 to 90 days.

D. DEPARTMENT Requested Enforcement

The DEPARTMENT may request EPA to proceed with enforcement when the DEPARTMENT has been unable to achieve compliance through State remedies. The DEPARTMENT should make such requests of the Chief, Water Permits and Enforcement Branch, U.S. EPA, Region 4.

E. Sharing of Information on the Status of the Program and Improvement of Compliance Rates

1. The DEPARTMENT will prepare and submit to EPA information on the operation of the FWRP program in the manner prescribed by national guidance. The DEPARTMENT will seek to reduce the percentage of facilities in Significant Noncompliance (SNC) by 5 percent each year.
2. EPA will consolidate DEPARTMENT reports and make available comparative

information from other states.

3. The DEPARTMENT will share with EPA any enforcement actions taken to protect water, including wetlands, from unpermitted discharges of residuals or sludges.
- F. **Nothing in this agreement should be construed to constitute or create a valid defense to regulated parties in violation of environmental statutes, regulations, or permits.**

Section VII. Pretreatment

This section is intended to define DEPARTMENT and EPA responsibilities for establishment and enforcement of the National Pretreatment Program under Sections 307(b) and (c) and 402 of the CWA.

A. Basic Program

1. The DEPARTMENT has primary responsibility for ensuring:
 - a. enforcement against sources introducing pollutants prohibited by 40 C.F.R. Part 403.5;
 - b. application and enforcement of Chapter 62-625 of the Florida Administrative Code and the National Categorical Pretreatment Standards (NPS) established by the REGIONAL ADMINISTRATOR in accordance with Section 307 of the CWA;
 - c. review, approval, denial and oversight of POTW Pretreatment Programs to see that Chapter 62-625, F.A.C., is enforced in accordance with procedures outlined in that Chapter and federal regulations;
 - d. incorporation of POTW Pretreatment Program conditions in permits issued to POTWs as required in Chapter 62-625, F.A.C., which is adopted to be in conformance with 40 C.F.R. Part 403.8 and CWA Section 402(b)(8); and
 - e. review and, as appropriate, approval of POTW requests for authority to modify categorical pretreatment standards to reflect removal of pollutants by a POTW

in accordance with 40 C.F.R. §§ 403.7, 403.9 and 403.11 and enforcement of related conditions in the municipal permit;

- f. POTW Pretreatment Programs comply with requirements specified in 40 C.F.R. § 403.8, and in the POTW's FWRP permit;
- g. industrial reports are submitted as outlined in 40 C.F.R. § 403.12.

The DEPARTMENT will apply and enforce all other pretreatment regulations as required by 40 C.F.R. Part 403. EPA will oversee DEPARTMENT pretreatment program operations consistent with 40 C.F.R. Part 403 regulations and this MOA.

- 2. The DEPARTMENT shall carry out independent inspection and surveillance procedures to determine compliance or noncompliance by the POTW with pretreatment conditions incorporated into their permit. The DEPARTMENT will also carry out inspections and surveillance procedures to determine, independent of information supplied by the industrial user, whether a representative sample of the Industrial Users (IUs) are in compliance with the NPS. Upon request, the DEPARTMENT will provide EPA copies of any notice received from a POTW that relates to a new or changed introduction of pollutants to the POTW.
- 3. The DEPARTMENT will issue, reissue, or modify permits according to the procedures outlined in Section IV of this AGREEMENT.
- 4. EPA will overview DEPARTMENT pretreatment operations consistent with 40 C.F.R. Part 403.

B. Section 403.6(a) NPS Categorical Standards

The DEPARTMENT shall review requests from IUs for industrial category or subcategory determinations received within sixty (60) days after the effective date of an NPS for a subcategory under which an IU believes itself to be included and prepare a written determination and

justification as to whether the IU does or does not fall within that particular subcategory. The DEPARTMENT shall forward its findings together with a copy of the request and necessary supporting information to EPA, Region 4, Water Permits and Enforcement Branch for concurrence. If EPA does not modify or object to the DEPARTMENT proposed findings within sixty (60) days after receipt thereof, the DEPARTMENT will take agency action approving or denying the request.

C. Section 403.7 Removal Credits

The DEPARTMENT shall review POTW applications for removal credits for users who are or may be subject in the future to NPS. The DEPARTMENT findings together with application and supporting information shall be submitted to EPA Region 4, Water Permits and Enforcement Branch, for review. No removal credits request shall be approved by the DEPARTMENT, if during the thirty (30) day (or extended) evaluation period provided for in 40 C.F.R. Part 403.11 (b)(1)(ii), and any hearing held pursuant to 40 C.F.R. 403.11(b)(2), the EPA Regional Water Management Division Director objects in writing to the approval of such a submission. Any requests for removal credits submitted to EPA before authorization of the FWRP shall be processed by EPA until a final decision is issued/denied by EPA.

D. Section 403.13 Variances From Categorical NPS for Fundamentally Different Factors (FDF)

The DEPARTMENT will make an initial finding on all requests from IUs for variances from categorical NPS for FDF, and in cases where the DEPARTMENT supports the variance, submit its findings together with the request and supporting information to EPA Region 4, Water Permits and Enforcement Branch, for a final review. The DEPARTMENT will not grant a FDF request until written concurrence has been received from EPA. The DEPARTMENT can deny requests for FDF without EPA review.

E. Effective Integration of Pretreatment Enforcement Activities into the FWRP Program

1. The DEPARTMENT will have enforcement response procedures and time frames consistent with the Pretreatment Compliance Monitoring and Enforcement Guidance and Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements (Sept. 1989). This includes reporting all FWRP regulated POTWs (including minor POTWs with approved pretreatment programs) on the QNCR when reportable noncompliance (RNC) and significant noncompliance criteria are met. These procedures will include initiating appropriate enforcement action where POTW's fail to submit approvable pretreatment programs, have violations of FWRP pretreatment requirements, or fail to submit timely reports. The DEPARTMENT will also have procedures for evaluating whether POTW's are initiating appropriate enforcement responses to violations by IU's. Where POTW's are not the primary control authorities, the DEPARTMENT is directly responsible for having these procedures in place for categorical and significant non-categorical Industrial Users. These procedures will be reviewed annually and any changes submitted as part of the EMS update.
2. The DEPARTMENT will initiate enforcement action against permittees with pretreatment programs that are in significant noncompliance, as a result of: failure to meet milestones in enforceable schedules for submitting required local pretreatment programs; violations of effluent limits; and delinquent POTW pretreatment reports. Enforcement actions against these POTWs will be taken consistent with the criteria and time frames for the FWRP program. The DEPARTMENT will also initiate enforcement actions against POTWs for failure to adequately implement the pretreatment program or enforce against their IUs and will initiate IU enforcement actions where necessary, generally in conjunction with enforcement against the responsible POTW that is failing to enforce or

as part of an overall strategy to bolster a local program. The DEPARTMENT will ensure that POTWs provide, at least annually, public notification of significant violations in the daily newspaper with the largest circulation published in the municipality in which the POTW is located.

F. Miscellaneous

Nothing in this AGREEMENT is intended to affect any Pretreatment requirement, including any standards or prohibitions, established by State or local law, as long as the State or local requirements are no less stringent than any set forth in the National Pretreatment Program, or other requirements or prohibitions established under the CWA or federal regulations. EPA may take actions authorized by Federal law if State or local requirements are less stringent than:

1. any set forth in the NPS, or
2. other requirements or prohibitions established under the CWA or applicable applications.

Section VIII. Reporting and Transmittal of Information on FWRP Regulated Facilities

A. DEPARTMENT to EPA		
1.	A copy of all complete permit applications, draft permits, public notices, fact sheets or statements of basis, and as applicable, new source/new discharger determinations, except for those for which permit review has been waived	At the time of public notice
2.	A copy of any applicant's NOI to be covered by a general permit	Upon request by EPA
3.	A copy of all proposed permits (including general permits), recommendations of any other affected State, written comments and hearing records, DEPARTMENT response to comments, including response to recommendations from another State, except those proposed permits for which permit review is waived by EPA or EPA has reviewed and approved a draft permit which has not been changed as a result of public comments	When drafted
4.	One copy of all issued permits and documentation which is related to or affects authorization of the permit	As issued
5.	Copies of all inspection reports and copies of letters transmitting them to permittees for major facilities. Inspection reports for minor facilities will be provided upon request.	Within 60 days of survey or for CSI, 60 days after the sampling results are received
6.	A monthly inspection status report summarizing the status of all complete and incomplete inspections for the previous month.	Within 45 days following the reporting month

7.	<p>For all major dischargers subject to regulation under s. 402 of CWA, a permit noncompliance report (the "Quarterly Noncompliance Report") including information defined in 40 C.F.R. Part 123.45</p> <ul style="list-style-type: none"> - Facility name, location and permit number - Description and date history of each noncompliance - Description of actions and dates of actions by the DEPARTMENT to obtain compliance - Current compliance status (include date of resolution or return to compliance if it has occurred) - Mitigating circumstances 	<p>Quarterly report due within 60 days of each quarter</p>
8.	<p>For all non major permittees subject to regulation under s. 402 of the CWA, a statistical summary shall be prepared (as described in 40 C.F.R. Part 123.45) indicating number of noncompliances, number of enforcement actions and number of extensions of compliance deadlines. The summary shall list noncompliances according to the following categories:</p> <ul style="list-style-type: none"> - Failure to complete construction - Failure to submit scheduled reports - Noncompliance with effluent limitations - Failure to report effluent data - Deficient reports. <p>A separate list by name and permit number of all major discharger permittees, one year or more behind on their construction schedule, shall also be submitted.</p>	<p>Annually within 60 days following the end of the Federal fiscal year (September 30)</p>
9.	<p>Copies of all enforcement actions against major discharger violators of permit conditions and pretreatment requirements, including:</p> <ul style="list-style-type: none"> - Administrative Orders - Initial determinations - Processing for Judicial Action - Consent Decrees 	<p>Copies - as issued</p>

10.	<p>Copies of the following correspondence, required by Section VII of this Agreement to carry out the Pretreatment Program:</p> <ul style="list-style-type: none"> - Categorical pretreatment determinations made under Section VII.B - Initial removal credit determinations under Section VII.C. - Initial determinations on pretreatment FDF under Section VII.D. 	As issued or received
B. EPA to DEPARTMENT		
1.	Revisions to the schedule of PAIs, CSIs and CEIs	As needed
2.	Copies of all EPA completed PAIs, CSI and CEI reports and data	Within 60 days of survey
3.	Notification of citizen complaints where a citizen does not agree to contact the STATE directly	Within 10 days of complaint receipt
4.	Notification to the DEPARTMENT of observed violations resulting from EPA oversight inspections which do not qualify as PAIs, CSI or CEI reports	Within 30 days of inspection
5.	Notification of the commencement of Federal enforcement and the actions being taken	As initiated
6.	An analysis of the FWRP operation based on DEPARTMENT reports, meeting with DEPARTMENT officials, and file audits	Quarterly
7.	Assistance in obtaining PCS retrievals and prompt notice of changes in PCS procedures	As needed, 30 days in advance of change in PCS procedures

8.	Copies of court decisions/actions affecting the permit issuance, compliance and enforcement process	Within 15 days of action
9.	A list of major dischargers located in Florida who have multi-state interests and noncompliance/violations in other eastern States and identification of the type of noncompliance	Quarterly

C. Transfer of Files from EPA to State upon Program Approval

1. Upon approval of the DEPARTMENT FWRP program by the REGIONAL ADMINISTRATOR, EPA will immediately deliver to the DEPARTMENT all project files for pending permit applications proposed for issuance/reissuance. Project files shall include all relevant information including but not limited to application forms, correspondence, draft permits, public notices, fact sheets, statements of basis, and any other documents relating to the pending permit. EPA will ensure all project files are complete prior to delivery to the DEPARTMENT.
2. In accordance with a mutually agreed upon schedule, EPA will deliver files for all other permits to the DEPARTMENT. Files shall contain all relevant information pertaining to the issuance of the permit as well as copies of all DMRs, all compliance reports, all enforcement actions, and other pertinent information and correspondence. EPA will ensure all files are complete prior to delivery to the DEPARTMENT.

Section IX. Program Review

The DEPARTMENT and EPA are responsible for assuring that FWRP is consistent with all requirements of this AGREEMENT, the State Program Plan, and applicable sections of 40 C.F.R. Part 122-125 and 40 C.F.R. Part 140. To fulfill this responsibility, EPA shall:

1. Review the information transmitted from the DEPARTMENT to assure that all the

requirements of Section VIII of this AGREEMENT are met.

2. Meet with DEPARTMENT officials at least annually to observe the data handling, permit processing, compliance monitoring, and enforcement procedures, including both manual and automated data processing.
3. Examine in detail the DEPARTMENT files and documentation of selected facilities to determine whether:
 - a. Permits are processed and issued consistently with Federal requirements;
 - b. Easy capability exists to discover permit violations when they occur;
 - c. DEPARTMENT compliance reviews are timely;
 - d. DEPARTMENT selection of enforcement actions is appropriate;
 - e. DEPARTMENT enforcement actions are both timely and effective.

These detailed file audits shall be conducted by EPA in the appropriate DEPARTMENT office annually as funds allow. The DEPARTMENT shall be notified thirty days in advance of the audit so that appropriate DEPARTMENT officials may be available to discuss individual circumstances and problems with EPA. A copy of the audit report shall be transmitted to the DEPARTMENT when available.

4. Determine the need for (and to hold) public hearings on the FWRP program.
5. Review DEPARTMENT public participation policies, practices, and procedures. In the event EPA determines that elements of FWRP are in any way deficient or inconsistent with this AGREEMENT, the State Program Plan, and applicable Federal regulations and statutes, EPA shall notify the DEPARTMENT in writing of these inconsistencies or other deficiencies. The DEPARTMENT shall respond in writing within thirty (30) days. EPA shall inform the DEPARTMENT in writing, within thirty (30) days of its determination, whether noted inconsistencies or deficiencies have been rectified. If they have not been

- corrected, EPA may proceed in accordance with Sections 309 and 402(c)(3) of the Act.
6. Prior to taking any action to propose or effect any substantial amendment, recision, or repeal of any statute, rule or directive which has been approved by EPA in connection with the FWRP, the DEPARTMENT shall notify the REGIONAL ADMINISTRATOR and shall transmit the text of any such change to EPA, Region 4, Water Permits and Enforcement Branch, for review and approval. The DEPARTMENT shall keep EPA fully informed of any proposed modification or court action which acts to amend, rescind or appeal any part of its authority to administer the NPDES program. EPA acknowledges that the DEPARTMENT has no veto authority over acts of the state legislature and therefore reserves the right to initiate procedures for withdrawal of approval of the State program in the event that the state legislature enacts any legislation or issues any directive which substantially impairs the DEPARTMENT ability to administer the NPDES program or to otherwise maintain compliance with NPDES program requirements.
 7. The DEPARTMENT shall obtain the approval of the REGIONAL ADMINISTRATOR before authorizing the use of any alternative test method under Chapter 62-160, F.A.C., that has not already been approved by EPA for sampling/analyzing the quality of the discharge from a facility permitted under s. 403.0885, F.S.
 8. If there are revisions to the Clean Water Act and the regulations which implement it, the DEPARTMENT shall seek any amendments to its statutes, rules, or program authorization that are necessary to preserve and maintain compliance with NPDES program requirements.

Nothing in this AGREEMENT shall be construed to limit EPA authority to take action under Sections 308, 309, 311, 402, 504, or other sections of the Act.

Nothing in this AGREEMENT shall be construed to require the DEPARTMENT to take any action which is not authorized by State law.

Section X. Computations of Time

In computing any period of time prescribed by this MOA, the day from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which case the period extends until the next day which is not a Saturday, Sunday or legal holiday. When the period is less than seven days, intermediate Saturdays, Sunday or legal holidays shall be excluded in the computation.

Section XI. Approval and Effective Date of Agreement

This Memorandum of Agreement shall take effect upon approval of the REGIONAL ADMINISTRATOR, U.S. Environmental Protection Agency, Region 4. Either the SECRETARY or REGIONAL ADMINISTRATOR may initiate action to modify this MOA at any time. If the REGIONAL ADMINISTRATOR determines that any modification to the MOA initiated by the DEPARTMENT does not conform to the requirements of Section 402(b) of the CWA, or to the requirements of 40 C.F.R. Parts 122-125 or any other applicable federal regulations, the REGIONAL ADMINISTRATOR shall notify the SECRETARY, in writing, of any proposed revision or modification which must be in this AGREEMENT. Any proposed amendments or revisions must be put in writing and signed by the SECRETARY and the REGIONAL ADMINISTRATOR with the prior concurrence of the Director, EPA Office of Wastewater Management and EPA Associate General Counsel for Water.

4/19/95
(DATE)

5/11/95
(DATE)

Virginia B. Wetherell
VIRGINIA B. WETHERELL
Secretary, State of Florida
Department of Environmental Protection

John H. Hankinson, Jr.
JOHN H. HANKINSON, Jr.
Regional Administrator, Region 4
U.S. Environmental Protection Agency